

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	MB Docket No. 14-82
	)	
<b>PATRICK SULLIVAN</b>	)	FRN 0003749041, 0006119796,
(Assignor)	)	0006149843, 0017196064
	)	
and	)	Facility ID No. 146162
	)	
<b>LAKE BROADCASTING, INC.</b>	)	File No. BALFT-20120523ABY
(Assignee)	)	
	)	
Application for Consent to Assignment of	)	
License of FM Translator Station W238CE,	)	
Montgomery, Alabama	)	

To: Marlene H. Dortch, Secretary  
Attn: Chief Administrative Law Judge Richard L. Sippel

**ENFORCEMENT BUREAU'S OPPOSITION TO MOTIONS TO DISMISS**

1. On May 8, 2017, Lake Broadcasting, Inc. (Lake) filed a motion to dismiss the above-captioned application of Patrick Sullivan (Sullivan) for Consent to Assignment of the License of FM Translator Station W238CE, Montgomery, Alabama (Application) to Lake.<sup>1</sup> On May 11, 2017, Patrick Sullivan (Sullivan) filed a further motion to dismiss the Application, expressing an intention to transfer the Application now to a third party.<sup>2</sup> As each of these motions address the same Application and seek the same result, the Enforcement Bureau (Bureau) responds herein to both motions.

2. Lake's Motion seeks immediate dismissal of the Application with prejudice but apparently only as to the issues designated in the Commission's Hearing Designation Order

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<sup>1</sup> See Motion to Dismiss, filed May 8, 2017 (Lake's Motion).

<sup>2</sup> See Further Motion to Dismiss, filed May 11, 2017 (Sullivan's Further Motion).

(HDO) directed to Lake.<sup>3</sup> In its Motion (and the accompanying declaration), Lake states that “Lake will not file any further broadcast applications” with the Commission.<sup>4</sup> The Motion is silent as to whether Michael S. Rice (Rice) – Lake’s president, director and sole shareholder, and a convicted felon who previously held radio station authorizations that were revoked on the basis of Rice’s felony convictions and his misrepresentation to, and lack of candor before, the Commission – will also agree not to file any license applications with the Commission. For the reasons discussed below, the Acting Chief, Enforcement Bureau, through his attorneys, opposes Lake’s Motion and Sullivan’s Further Motion.

### **Background**

3. On May 23, 2014, the Commission’s Media Bureau designated the Application for hearing to determine, *inter alia*, “whether Rice has been rehabilitated to an extent that the Commission is fully confident Rice will refrain from engaging in the kind of behavior for which he was convicted” and whether, Rice (and therefore, Lake) “can be relied upon to be truthful, candid, and forthcoming in their dealings with the Commission” and “comply in all other respects with the Commission’s Rules, regulations, and policies.”<sup>5</sup> Accordingly, the HDO designated for hearing the following issues:

- (a) To determine the effects, if any, of Michael S. Rice’s felony convictions on his qualifications and/or the qualifications of Lake Broadcasting, Inc., to be a Commission licensee;
- (b) To determine the effects, if any, of the misrepresentation and lack of candor by Michael S. Rice’s broadcast companies on his qualifications and/or the qualifications of Lake Broadcasting, Inc., to be a Commission licensee;

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<sup>3</sup> See Motion at 1; see also *Patrick Sullivan and Lake Broadcasting, Inc.*, Hearing Designation Order, 29 FCC Rcd 5421 (MB 2014).

<sup>4</sup> Motion at 1 and Declaration.

<sup>5</sup> HDO at ¶ 21.

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Michael S. Rice and/or Lake Broadcasting, Inc., is qualified to be a Commission licensee; and

(d) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether the captioned Application for consent to the assignment of license for Station W238CE should be granted.<sup>6</sup>

4. Since the issuance of the HDO almost three years ago, the Enforcement Bureau (Bureau) has expended valuable time and resources developing a record regarding the allegations set forth therein. Specifically, the Bureau prepared and served on Lake/Rice requests for admissions, requests for documents, and interrogatories. The Bureau also engaged the services of an outside expert psychologist, Dr. Kimberly Weitzl, to evaluate Rice and to offer an opinion concerning the likelihood he would re-offend. Counsel for the Bureau travelled to Missouri to depose Rice and the expert psychologist he and Lake retained (Dr. Duncan-Hively) as well as to defend the depositions of Dr. Weitzl and the Bureau's other expert, Tamara Gremminger, a sex offender specialist in the Probation and Parole Department of the Missouri Department of Corrections.

5. In addition, in the weeks before trial, the Bureau prepared its direct case exhibits, worked with Dr. Weitzl and Ms. Gremminger to prepare their written direct testimony, prepared cross-examinations of Lake and Rice's witnesses, drafted a trial brief, prepared objections to Lake's direct case and responses to Lake's objections to the Bureau's direct case, and opposed Lake's motion *in limine* seeking to disqualify Tamara Gremminger.

6. On May 3, 2017, pursuant to *Order*, FCC 17M-22, the hearing commenced.<sup>7</sup> Lake/Rice presented their direct case – calling first Rice, and then Dr. Duncan-Hively, to testify. Counsel for the Bureau cross-examined both Rice and Dr. Duncan-Hively. At the close of

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<sup>6</sup> *Id.* at ¶ 22.

<sup>7</sup> *See Order*, FCC 17M-22 (ALJ, rel. Apr. 27, 2017).

Lake/Rice's direct case, the Bureau put on its direct case, calling Ms. Gremminger and Dr. Weitzl to testify. Counsel for Lake/Rice cross-examined each of the Bureau's witnesses.

7. After a lunch break on the last day of the hearing – and right before counsel for the Bureau was to conduct the re-direct examination of its expert, Dr. Weitzl – counsel for Lake/Rice announced that Patrick Sullivan was withdrawing the Application and that Lake/Rice would not continue to engage in the hearing proceeding. Counsel for Lake/Rice suggested that his clients would be filing a motion to dismiss. Nevertheless, in order to ensure that the record of the hearing was complete after three days of testimony and the admission of Lake's and the Bureau's numerous direct case exhibits, the Bureau requested that it be allowed to conduct its re-direct examination of Dr. Weitzl. The Presiding Judge agreed. The Presiding Judge offered counsel for Lake/Rice the opportunity to re-cross-examine Dr. Weitzl, which he declined. As directed by the Presiding Judge, Lake filed a motion to dismiss the Application on May 8, 2017.<sup>8</sup> On May 11, 2017, three days past the deadline set by the Presiding Judge, Sullivan filed a further motion to dismiss the Application.

**It Would Be a Waste of Commission Resources and Public Funds to Dismiss the Hearing Without Resolution of Key Designated Issues Concerning Rice**

8. As noted above, in its Motion, Lake agrees that it “will not file any further broadcast applications” with the Commission. Since Lake has agreed not to seek a broadcast license from the Commission in the future, it is not necessary for the Commission to continue to question whether it is qualified to be a Commission licensee. Thus, the issues designated in the HDO that are directed to whether *Lake* is qualified to be a Commission licensee are moot.

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<sup>8</sup> See Order, FCC 17M-23 (ALJ, rel. May 5, 2017).

9. However, the Motion is silent as to Rice.<sup>9</sup> As discussed above, and as set forth more fully in the HDO, this case arose from the fact that Lake's president, director and sole shareholder (Rice) was a convicted sex offender whose previous Commission licenses had been revoked on the basis of that conviction and his misrepresentations to, and lack of candor with, the Commission.<sup>10</sup> The HDO was issued to resolve the question of whether Rice has been rehabilitated to an extent that promotes confidence that he will refrain from engaging in the behavior for which he was convicted – and thus whether he is qualified to hold any Commission license.

10. After three years of litigation, the expenditure of countless Bureau resources and public funds, the introduction of evidence, and the completion of a full hearing, neither Lake nor Rice (nor Sullivan) has offered any explanation for the sudden request to dismiss the case. More importantly, it is evident by Rice's refusal to agree not to seek another Commission license (whether it be broadcast or amateur or wireless) that he intends, at some point in the future to do just that, either as an individual or through a separate corporate entity. Indeed, Rice holds in his own name two wireless authorizations: an Amateur Radio Service License for call sign W0DQJ and a General Radiotelephone Operator License.<sup>11</sup> In addition, in the past, Rice has utilized corporate entities other than Lake to acquire Commission licenses.<sup>12</sup> Any such subsequent

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<sup>9</sup> Bureau's counsel contacted counsel for Lake/Rice to inquire about whether Rice would be willing to agree not to file any future license applications with the Commission. Bureau counsel was told that Rice is unwilling to make such a commitment.

<sup>10</sup> See, e.g., HDO at ¶¶ 1-19; see also *Contemporary Media, Inc.*, Decision, 13 FCC Rcd 14437 (1998), *recon. denied*, Order, 14 FCC Rcd 8790 (1999), *aff'd sub nom, Contemporary Media, Inc. v. FCC*, 214 F.3d 187 (D.C. Cir. 2000), *cert. denied*, 532 U.S. 920 (2001)).

<sup>11</sup> See FCC Universal Licensing System: <http://wireless2.fcc.gov/UlsApp/UlsSearch/license.jsp?licKey=776272> (last visited May 10, 2017) (Amateur -Ham license); FCC Universal Licensing System: <http://wireless2.fcc.gov/UlsApp/UlsSearch/license.jsp?licKey=2096237> (last visited May 10, 2017) (General Radiotelephone Operator License).

<sup>12</sup> The licenses previously held by Rice – which the Commission revoked as a result of his felony conviction and his misrepresentations to, and lack of candor with, the Commission – were held by Contemporary Media, Inc (CMI). Rice was the sole shareholder of CMI. See, e.g., *Contemporary Media, Inc.*, Decision, 13 FCC Rcd 14437 (1998),

application would again raise the very question that has already been fully litigated in this case – whether Rice has been rehabilitated such that he has the qualifications to be a Commission licensee.

11. To allow Rice to put off resolution of the designated issues concerning his rehabilitation and qualifications by simply walking away from the Application at this late date in the proceeding would be against the public interest and a waste of the extensive Commission resources (including those of the Bureau and the Office of the Administrative Law Judge) and public funds already expended to bring this case to hearing. Moreover, it would make a mockery out of the Commission's hearing process if an applicant such as Rice were allowed to proceed to trial – to put on a direct case and to challenge the Bureau's direct case – and then, after everything has been completed, and presumably because he is no longer certain of a favorable outcome, just call it quits and reserve the right to fight about the exact same issues another day. For reasons of judicial economy and efficiency, an applicant should be estopped from playing the hearing game over and over – and wasting valuable public resources in the process – until it is finally (if ever) willing to be judged.

12. Here, there is a complete record on which the Presiding Judge can prepare an initial decision on Rice's qualifications. This is not a situation in which either party was prevented from presenting its case. Rather, each of the parties (Lake/Rice and the Bureau) presented its entire direct case and the Presiding Judge ruled on – and admitted, where he deemed appropriate – each party's direct case exhibits. Likewise, counsel for Lake/Rice cross-examined the Bureau's direct case witnesses and the Bureau's counsel cross-examined Lake/Rice's direct case witnesses. On the last day of the hearing, counsel for Lake/Rice was also

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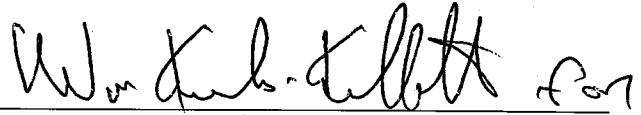
*recon. denied*, Order, 14 FCC Rcd 8790 (1999), *aff'd sub nom*, *Contemporary Media, Inc. v. FCC*, 214 F.3d 187 (D.C. Cir. 2000), *cert. denied*, 532 U.S. 920 (2001)).

given the opportunity to offer rebuttal testimony from Dr. Duncan-Hively and to re-cross-examine the Bureau's expert. He chose not to do either of those things. Neither Lake/Rice nor the Bureau can make any argument that it would be prejudiced by the Presiding Judge considering the complete record that was developed during the hearing in rendering an initial decision. Indeed, this is the only outcome that best serves the public interest in resolving this matter as efficiently and economically as possible.

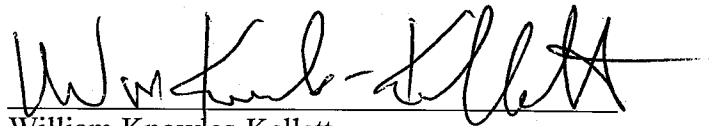
13. Accordingly, the Bureau respectfully requests that the Presiding Judge deny Lake's Motion and Sullivan's Further Motion and order the parties to submit proposed findings of fact and conclusions of law – on a date to be determined – so that he may render an initial decision on the designated issues.

Respectfully submitted,

Michael Carowitz  
Acting Chief, Enforcement Bureau

A handwritten signature in black ink, appearing to read "Gary Oshinsky", written over a horizontal line.

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A handwritten signature in black ink, appearing to read "William Knowles-Kellett", written over a horizontal line.

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May 15, 2017



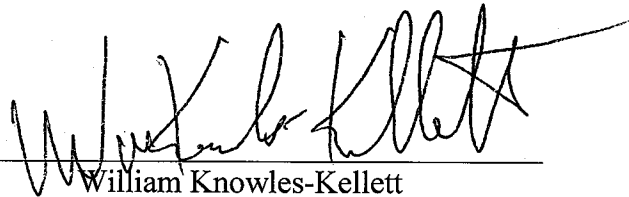
**CERTIFICATE OF SERVICE**

William Knowles-Kellett, an attorney in the Enforcement Bureau's Investigations & Hearings Division, certifies that he has on this 15<sup>th</sup> day of May, 2017, sent by first class United States by email copies of the foregoing ENFORCEMENT BUREAU'S OPPOSITION TO LAKE'S MOTIONS TO DISMISS to:

Jerold L. Jacobs, Esq.  
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Counsel for Patrick Sullivan and Lake Broadcasting, Inc.

And caused a copy of the foregoing to be served via hand-delivery to:

The Honorable Richard L. Sippel  
Chief Administrative Law Judge  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 1-C861  
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William Knowles-Kellett